1263.

SUPREME COURT OF THE UNITED STATES.

No. 155.

THOMAS DAVIS, PLAINTIFF IN ERROR,

vs.

WILLIAM M. TILESTON.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

and which cotton was shipped on board of steamer Big Black, Steilling, master, without the orders of or being subject to the control of your orator; and said cotton was left by said steamer at the house of and in the care of Young & Richards, Vicksburg, Miss., and by them twelve of said bales were shipped to George Buckanan, of New Orleans, for the benefit of and on account of the said "Aberdeen and Pontotoc Railroad and Banking Company." The remaining six bales were shipped and sold in New Orleans from the said house of Young & Richards in Vicksburg, for the benefit of and in the name of one Dickens, for between fourteen and fifteen cents per pound; and the said Dickens was found by your orator on the western bank of the Mississippi river, in the State of Arkansas, about forty miles above Memphis, Tennessee; and the proceeds of the sale of the said six bales of cotton was collected from him by your orator, amounting to about four hundred dollars, but not one cent has ever been collected for the twelve bales shipped to Buckanan, for and on account of the said bank, or applied by said bank to the credit of your orator's bond.

Your orator further states, that, relying upon the statements of the agents of the said bank, solemnly made and often reiterated, that they knew nothing about the twelve bales of cotton or any other part of the 18 bales shipped as before stated, he did not know of the shipment of said twelve bales of cotton from Young & Richards, Vicksburg, to Buckanan, of New Orleans, for and on account of the said "Aberdeen and Pontotoc Railroad and Banking Company," until long after the rendition of said judgment in December, 1840, against your orator, as a debtor to said bank, in favor of the said William M. Tilitson & Co., and was kept from his legal and lawful defence and credits on the trial of said garnishment by the false assurances of the bank and its agents, so made to your orator as aforesaid, and as your orator fully believes intended for and made to lull him to sleep, and impose upon his general credulity and confidence in his fellow-man where the least show of honesty is to be discovered. Your orator further states unto your honor, that he was not apprized of, but wholly ignorant of the fact that the said twelve bales of cotton was shipped by the agents of the said bank from Vicksburg to New Orleans as above stated, until by a critical examination, about a year or thereabouts since, through his agent, the facts were ascertained to be as before stated.

Your orator further states, that from information and the general results of the operations of said bank, he is induced to believe, that the said Aberdeen and Pontotoc Railroad and Banking Company was not, nor did its agents and officers conduct business upon the principle of fair dealing and conscientious honesty; but to carry on and continue their scheme of fraud and imposition combined with real persons, or in the name of fictitious persons, (after the total bankruptcy of the notes issued by said bank,) and issued checks and certificates of deposite for large sums of money. And upon said certificates and checks, fraudulent issued, suits were brought against said bank, and judgment rendered for said fictitious plaintiffs, for the express purpose, as they believed, of

forcing payment from the debtors to said bank in sound par funds, and therefore avoid ever redeeming the paper of said bank. And for which checks and certificates of deposites in but few cases was there ever one dollar paid into the said bank; but they were issued for the purpose above stated of enabling the said bank to fleece and defraud the honest and unsuspecting debtors of said bank in the fraudulent collection of good funds in place of depreciated notes; and for this description of cases, your orator is fully persuaded that William M. Tilitson & Co., the plaintiffs in said garnishment, is one.

Charge 1st. Your orator charges that the said bank of the "Aberdeen and Pontotoc Railroad and Banking Company" combining and confederating with divers persons, to wit, George Buckanon, of the city of New Orleans, and divers other persons unknown to your orator, to cheat and defraud your orator out of the said twelve bales of cotton, shipped upon board of the steamer Big Black, from the port of Burlingham, on *on* the Tallahatche river, to Young and Richards, agents of the said bank, at Vicksburg, Mississippi. And by said agents shipped to the said George Buckanon, of the city of New Orleans, in the name and on account of the said bank, did succeed in deceiving [your] orator for so long a time.

2d. Your orator further expressly charges the officers and agents of the said bank combining and confederating to defraud him out of the value of the said twelve bales of cotton, worth about eight hundred dollars; utterly and positively denied to your orator any knowledge of the cotton or the agency of Buckanon, or Young & Richards; in violation of the sacred principles of truth and justice, and for the purpose of defrauding your orator in the premises.

3d. Your orator further states and expressly charges, that the said eighteen bales of cotton, worth $1200 *a* $1300, was delivered at Burlingham, on the Tallahatche river, in the spring of the year or last of the winter, 1839. And was shipped to Vicksburg on board the steamer Big Black, to C. P. Young, or Young & Richards, merchants at that place, and agents of the said "Aberdeen and Pontotoc Railroad and Banking Company." And was not subject to the control or direction of your orator in any manner whatever, but alone under the control and direction of said bank and its agents; which power and control was converted into an engine of fraud upon your orator by the said bank and its agents.

4th. Your orator further charges, that the said bank and its agents did receive the twelve bales of cotton, shipped from Young & Richards to their agent and factor, George Buckanon, of New Orleans, and have carefully and fraudulently denied the same, and refused to account and never have accounted with your orator for the same, or any part or parcel thereof, in direct and positive violation of truth, justice, common honesty, and equity, and to deceive your orator until they believed he would be without remedy or relief.

5th. Your orator further states and charges, that the said "Aberdeen and Pontotoc Railroad and Banking Company" as a corporate body,

have, as *as* he is informed and verily believes, long since been of doubtful credit and character, and by the developments that are daily being discovered of the true condition of said institution wholly and hopelessly bankrupt in character, and so wholly unable, and is believed unwilling, to pay and discharge its just liabilities, that the most confiding and credulous of its creditors have despaired of ever being able to collect one cent of their demands, and the claim of your orator must be forever lost to him, by reason of the reckless insolvency of the said bank.

6th. Your orator further states and charges, that the judgment rendered against him at the December term of the district court of the United States for the northern district of Mississippi, in favor Wm. M. Tilitson & Co., on the 10th day of the said month of December, as before stated, for $1,861 00, was the balance which then appeared to be due upon the cotton bond herein before mentioned, after calculating and adding the interest due thereon from date to the original sum and deducting payments therefrom; and that said cotton bond was the property of the Aberdeen and Pontotoc Railroad and Banking Company up to said date, and for no other or different consideration whatever, and is still the property of said bank.

7th. Your orator is informed and believes, and so states and charges the fact to be, that the suit in favor of the said William M. Tilitson & Co., against the said "Aberdeen and Pontotoc Railroad and Banking Company," was founded upon a fictitious, spurious, and fraudulent consideration, and a fraudulent and foul combination of said bank, or some of its agents, and the said Tilitson & Co.; and without the payment into said bank of any of its notes in circulation, honestly collected in the regular course of business, for the certificates of deposite upon which his said suit was founded; if, in fact, it be true that the said William M. Tilitson & Co. knows any thing of such a proceeding; but your orator charges that the said suit was brought for the benefit of persons connected with said bank, and in the name of the said plaintiffs, for the express purpose of the more certainly and securely consummating the schemes of fraud and oppression contemplated by said bank, and not upon a bona fide indebtedness of the said bank to the said Wm. M. Tilitson & Co.

8th. Your orator further charges, that the bank and its agents carefully concealed from your orator all knowledge of the fact, that they had directed and ordered the said cotton to be shipped from the port of Vicksburg, Mississippi, by their said agents Young & Richards, to their said agent, George Buckanon, of the city of New Orleans, Louisiana, and would have yet kept your orator in utter darkness on that subject, but for a decline of public confidence in their honor and veracity. Your orator was induced to attempt to track them, and find where his cotton had been stowed by them, and that their determined attempt to defraud him might be detected if possible.

9th. Your orator charges combination and confederacy between the officers and agents of the said "Aberdeen and Pontotoc Railroad and Banking Company," and the said William M. Tilitson & Co., with

the said George Buckanon, of New Orleans, and others, in collusion with them, whose names are unknown to your orator, to defraud your orator in the premises, and to exact from the earnings of his honest labor unconscious, unjust, an[d] oppression duties, and pretended false and fraudulent claims; in which, by their uncommon tact and capacity to conduct and manage a fraudulent enterprise and undertaking, they have, so far as your orator's rights are concerned, succeeded, to their hearts' composure and content, and to his great oppression and injury.

Your orator further states and charges, that he has, in strict and exact obedience to his original contract with the said "Aberdeen and Pontotoc Railroad and Banking Company, in which he received the sum of three thousand dollars in the notes of the said banking company, as an advance upon cotton to be delivered at the said town of Burlingham, paid them bona fide in their said notes $1,785 50, and twelve bales of cotton delivered at Burlingham about the 1st of March, 1839, worth at that time $8 *a* $900, say nett $840, making the aggregate sum of 2,725 50 dollars, and leaving now due from your orator upon said contract, after calculating and adding all lawful interest that has accrued upon the said contract, the sum of 809 47 dollars, which your orator here tenders and offers to pay in the notes issued and put in circulation by the said Aberdeen and Pontotoc Railroad and Banking [Company,] and has at command, if deemed material to make the tender, the whole amount of the said judgment in favor of the said William M. Tilitson & Co.; and when the whole is determined to be just, (of which your orator *have* no fear,) he is ready to discharge the same in the notes and paper of said bank.

In tender consideration of all of which premises, and for as much as your orator is wholly remediless in the courts of common law, and only relievable in a court of equity, where all matters of hardship, fraud, and oppression are peculiarly cognizable and relievable, your orator prays that the said William M. Tilitson & Co., the said George Buckhanon, and all other officers and agents of the said Aberdeen and Pontotoc Railroad and Banking Company, whose names are unknown to your orator, and when discovered your orator prays may be made defendants to this his bill of complaint, with apt and proper words to charge them; and that they, and each of them be compelled, upon their several corporal oaths, full, true, and perfect answer to make to all and singular the charges and allegations herein contained, in as full, true, and perfect a manner, as if the same were herein again repeated and particularly interrogated. And that the said William M. Tilitson & Co. be compelled to receive, in satisfaction of the said judgment against your orator, for $1,861 00, the notes of the said Aberdeen and Pontotoc Railroad and Banking Company, hereby tendered; and that the said plaintiffs be enjoined from further proceedings in said cause, until a full and final hearing of this suit; and that, on a full hearing of this cause, your orator prays that your honor may order, adjudge, and decree, that the said plaintiffs be perpetually enjoined, and that the said sum of eight hundred and forty dollars for the said twelve bales of cotton, with in-

terest from the first day of March, 1839, be allowed unto your orator, with such other and further relief as to your honor may appear to be just and equitable; and, as in duty bound, [your] orator will ever pray, &c.; and that the writ of subpœna, and supersedeas and injunction issue, &c., directed, &c., commanding, &c.

T. COOPWOOD & R. DAVIS,
Solicitors for compt.

Defendants will answer first—

First interrogatory. Was a judgment obtained by the Aberdeen and Pontotoc Railroad and Banking Company, on the 12th day of December, 1839?

Second. Was a writ of garnishment issued on the said judgment against complainant and his securities, S. R. McKie and James H. Bond?

3d. Was a judgment rendered against complainants for the sum of $1,861 00 and costs of suit, on the 10th day of December, 1840?

4th. Was the judgment credited on the 10th day of June, 1841, with two hundred and forty 77-100 dollars, and all costs?

5th. Did the complainant not borrow from the Aberdeen and Pontotoc Railroad and Banking Company the sum of three thousand dollars, for which he executed his cotton bond, as stated in the bill of complaint?

6th. Did the complainant not deliver at the town of Burlingham, on Tallahatchee river, eighteen bales of cotton upon said contract, or cotton bond, which was shipped by the bank? If so, what was done with the said eighteen bales of cotton?

7th. Did not complainant paid on said cotton bond the sum of $1,685 50?

8th. Is not the judgment rendered against complainant, the residue due the Aberdeen and Pontotoc Railroad and Banking Company, upon the cotton bond mentioned in this bill?

9th. Was not the judgment founded on a certificate falsely issued to the plaintiff in the judgment at law?

The defendants will, all and each, be required to answer all and each of the interrogatories.

COOPWOOD & DAVIS,
Solicitors for complt.

THE UNITED STATES OF AMERICA,
Northern district of Mississippi.

Personally came before me, Samuel J. Gholson, presiding judge of the district court of the United States for said district, Thomas Davis, the complainant in the foregoing bill of complaint, and, after being duly sworn, saith, that the facts stated in said bill upon his own knowledge are true, and that those stated upon information he believes to be true.

January 6th, 1843. THO. DAVIS.

27th July, 1843, sworn to and subscribed before me,

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

1267.

To the clerk of the district court of the United States for the northern district of Mississippi.

Let injunction to operate as a supersedeas issue as prayed for, upon the complainant's entering into bond, with securities to be approved by you, in a penalty equal to double the amount of the judgment at law, with conditions according to law.

Given under my hand, at my residence, in the town of Aberdeen, Mississippi, this 27th day of July, A. D. 1843, until which time this cause was continued.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

Complainant's bond filed August the 5th, 1843, as follows, to wit:

Know all men by these presents, that we, Thomas Davis, Stephen R. McKie, [and] James McKie, are held and firmly bound unto William M. Tileston, Charles N. Spofford, and William H. Hazletine, late partners under the name and style of Wm. M. Tileston & Co., in the sum of thirty-nine hundred and thirty-five dollars and ninety cents; for the payment of which we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 3d day of August, 1843.

The condition of this obligation is such, that whereas the said William M. Tileston, Charles N. Spofford, and William H. Hazletine, partners as aforesaid, recovered, on the 19th day of December, 1840, at common law, in the district court of the United States for the northern district of Mississippi, judgment against the said Thomas Davis, Stephen R. McKie, James H. Bond, and Gabriel B. Ragsdale, as garnishees of the Aberdeen and Pontotoc Railroad and Banking Company, for the sum of eighteen hundred and sixty-one dollars and costs of suit, with interest on said sum, at eight per centum per annum from the said nineteenth of December, 1840. And whereas the said Thomas Davis hath obtained from the honorable Samuel J. Gholson, judge of said district court, a writ of injunction to stay all further proceedings at law on said judgment; now, therefore, if the said Thomas Davis shall, in the event the said injunction be dissolved, well and truly pay all such sums of money and cost, due and to become due on said judgment, to the said William M. Tileston, C. N. Spofford, and William H. Hazletine, plaintiffs in said judgment, and also all such damages and costs as may be awarded against him by said court, then this obligation to be null and *and* void, otherwise to remain in full force and virtue.

THO. DAVIS, [L. S.]
S. R. McKIE, [L. S.]
JAS. M. McKIE. [L. S.]
[L. S.]

Sealed and delivered in the presence of, and acknowledged before, me.

C. M. PHIPPS.

Said bond is endorsed thus:

"The within bond and surety is approved by me, August 5, 1843.
"G. M. RAGSDALE, *Clerk*."

Writs of injunction and supersedeas issued at the time of filing the foregoing bond, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States to William M. Tileston, Charles N. Spofford, and William H. Hazeltine, partners under the style of Wm. M. Tileston & Co., their counsellors, attorneys, and agents, greeting:

Whereas it hath been represented to us in our district court for the northern district of Mississippi, in chancery sitting, on the part of Thomas Davis, of said district, complainant, that he has lately exhibited his bill of complaint against you, the said Wm. M. Tileston & Co., defendants, to be relieved touching the matters in said bill contained: we therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said Wm. M. Tileston & Co., your counsellors, attorneys, and agents, under the penalty of three thousand dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from executing a certain writ of venditioni exponas which issued out of said court on the 26th day of June, 1843, wherein you, the said Wm. M. Tileston & Co., are plaintiffs, and said Thomas Davis is defendant, and from any further proceedings against the said complainant, touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness, the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the 27th day of July, A. D. 1843, and in the 68th year of the independence of the United States. Issued the 5th day of August, 1843.

[L. S.]

G. M. RAGSDALE, *Clerk*.

Upon which said injunction the marshal made the following return, to wit: Came to hand August 6th, 1843; October 7th, 1843, duly executed on the attornies of record, Messrs. Harris and Harrison; the others not found.

A. K. McCLUNG,
Marshal no. dist. Mississippi.
By W. D. BRADFORD, *Deputy*.

Marshal's fees.

Entering execution and return -	$4 50
Mileage $4 00; 2 copies $1 00 -	5 00
	$9 50

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

Whereas, in the district court of the United States, for the northern district of Mississippi, on the 19th day of December, A. D. 1840, a judgment was obtained against Thomas Davis, of said district, at the suit of William M. Tileston, Charles N. Spofford, and William H. Hazeltine, partners, under the style and firm of Wm. M. Tileston & Co., for the sum of eighteen hundred and sixty-one dollars, damages and cost of suit; and therefore you are lately commanded, that of the goods and chattels, lands and tenements, of the said Thomas Davis, you should cause to be made the damages, interest, and costs by the judgment aforesaid obtained.

Nevertheless, because that writ improvidently and erroneously issued out of the said court, therefore you are hereby commanded, that from further proceeding to execute the said writ upon the judgment aforesaid, you desist, and entirely supersede at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the 27th day of July, A. D. 1843, and in the 68th year of the independence of the United States. Issued the 5th day of August, 1843.

[L. S.]

G. M. RAGSDALE, *Clerk*.

Upon which supersedeas the marshal made the following return, to wit: Came to hand August 6th, 1843; and the venditioni exponas returned, stayed according to the command of the within writ of supersedeas, August 6th, 1843.

A. K. McCLUNG,
Marshal no. dist. Miss.
By W. D. BRADFORD, *Dep.*

Marshal's fees.

Entry and return, $00 50

Motion filed 4th of December, 1843, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of the State of Mississippi.

Dec. term, A. D. 1843.

THOMAS DAVIS
vs.
WILLIAM M. TILESTON & Co., et al. } In chancery.

Motion to dismiss the bill and supersedeas—

1st. Because there is no interrogatory part to said bill as required by rule of said court.

3d. Because there are no such words as are required by the 43d rule of the court, or words of the same effect or import.

4th. Because there is no equity in complainant's bill.

5th. Because there is no release of errors filed.

HARRIS & HARRISON,
For motion.

Complainant's release of errors filed December the 7th, 1843, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Northern district of Mississippi.

WILLIAM M. TILESTON & Co.
vs.
THOMAS DAVIS et al.

The defendant, Thomas Davis, hereby releases all errors at law in the judgment and cause above stated.

Given under my hand and the seal, the day of , 1843.

THOMAS DAVIS. [SEAL.]

And afterwards, to wit, on the 9th day of December, A. D. 1843, being a day of the December term of said court, the following proceedings were had in the foregoing cause, to wit:

SATURDAY, *December 9th*, 1842.

THOMAS DAVIS
vs.
WILLIAM M. TILESTON & Co. } In chancery.

The motion to dissolve the bill and supersedeas in the case is withdrawn, and leave granted to defendants to plead, answer or demur, to said bill of complaint on the first day of next term, up to which time this cause is continued.

Demurrer to the foregoing bill filed June the 3d, 1844, being the first day of the June term of said court, in the words and figures following, to wit:

Bill of complaint.

THOMAS DAVIS
vs.
WILLIAM M. TILESTON & Co., defendants, et al. } In chancery.

UNITED STATES DISTRICT COURT,
For the northern district of Mississippi.

The defendants, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be in such manner and form as the same are therein set forth, do demur in law to the said bill, and for cause of demurrer show that the said complainant has not made such a case as entitles him in a court of equity to any recovery or relief from or against this defendant, for or

on account of the matters contained in said bill. Wherefore, these defendants do demur to the said bill, and to all the matters and things therein contained, and pray judgment of this honorable court whether they shall be compelled to make any other or further answer to the said bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf sustained. And the said defendants show to the court the following causes of demurrer:

1st. The bill shows that the complainant had a full and complete remedy at law, which he has neglected.

2d. That the bill shows that complainant knew, at the time he answered the garnishment against him, that no credit had been given for said cotton, and having at that time acquiesced in the conduct of the bank, and acknowledged himself indebted to the amount of defendant's judgment, he cannot now reopen the judgment in this court to be heard, to deny what he might and ought to have denied in his said answer to said garnishment.

3d. That it appears by complainant's own showing, that judgment was rendered against him on his answer at December term, 1840; that he made a payment and satisfaction of said judgment by the execution and forfeiture of a forthcoming bond in May, 1841. That as late as between June and December, 1841, he took the benefit of the valuation law on said execution, and postponed further action by the said defendants for twelve months thereafter, without ever settling up the matter contained in his bill, or claiming any deduction or offset from the said judgment in favor of defendants.

4th. That the pretended charge of fraud is not specifically stated, but is vague, uncertain, and indefinite and general.

5th. That the said bill seeks to offset the judgment of defendants against said complainant on his answer, and to pay and discharge the same with the bills and liabilities of the Aberdeen and Pontotoc Railroad and Banking Company, obtained by him after he has acknowledged himself indebted in his answer, and after judgment has been rendered against him in favor of defendants, and after he has executed a forthcoming bond, and the same has been forfeited and become a new judgment against him in favor of defendants, and after he has availed himself of the valuation law on said judgment.

Joinder in short by consent.

DAVIS & COOPWOOD,
Solicitors for complainant.

6th. That the said bill shows no equity on its face.

HARRIS & HARRISON,
Solicitors for defendants, Wm. M. Tileston & Co.

Personally appeared before me, a commissioner of deeds for the city and county of New York, William M. Tileston and Charles N. Spofford, of the city of New York, the defendants in the foregoing suit before named, who, being duly sworn, say that the foregoing demurrer is not interposed for delay.

W. M. TILESTON,
CHARLES N. SPOFFORD.

Sworn to and subscribed before me, this 14th day of May, A. D. 1841.
GEO. B. SHERWOOD,
Commissioner of Deeds.

STATE OF NEW YORK,
City and county of New York, ss:

I, James Conner, clerk of the city and county of New York, do hereby certify, that Geo. B. Sherwood, before whom the annexed deposition was taken, was, at the time of taking the same, a commissioner of deeds in and for said city and county, duly commissioned and sworn, and authorized by the laws of this State to take the same; and that I believe the signature of said commissioner thereunto subscribed is genuine.

[L. S.] In testimony whereof, I have hereunto set my hand, and affixed the seal of the said county, the 14th day of May, 1844.
JAMES CONNER, *Clerk.*

We certify that, in our opinion, the within demurrer is well founded in point of law.
HARRIS & HARRISON,
Defendant's attorneys.

MAY 24th, 1844.

Personally came, in open court, William L. Harris, who being duly sworn says, that he is the attorney at law of the plaintiffs in this case, and conducting the said suit as their agent; that they reside, as deponent is informed and believes, in the city of New York; and that the within demurrer is not interposed for delay.
WILLIAM L. HARRIS.

Sworn to and subscribed in open court, this 10th June, A. D. 1844.
G. M. RAGSDALE, *Clerk.*

Afterwards, to wit, on the 11th day of June, 1844, being a day of the June term of said court, the further proceedings were had by said court in the foregoing cause, to wit:

THOMAS DAVIS
vs.
WILLIAM M. TILESTON & Co. } 4.—In chancery.

TUESDAY, *June the 11th*, 1844.

The bill and demurrer in this case are set down for hearing at the next term of this court, up to which time this cause is continued.

THOMAS DAVIS
vs.
WILLIAM M. TILESTON & Co. } 4.

Rule for decree pro confesso entered 2d December, 1844.
COOPWOOD & DAVIS,
Solicitors for complainant.

Defendant's answer to the aforesaid bill, filed December the 3rd, 1844, in the words and figures following, to wit:

THOMAS DAVIS
vs.
WM. M. TILESTON & Co., et al. } No. 8.

In chancery, in the United States district court for the northern district of Mississippi.

The answer of William M. Tileston and Charles N. Spofford to the above bill of complaint.

To the 1st interrogatory defendants answer, a judgment was obtained against the Aberdeen and Pontotoc Railroad and Banking Company on the 12th day of December, 1839, in favor of defendants, as stated in said bill, as defendants are informed.

To the 2d interrogatory they answer, that a writ of garnishment was issued on said judgment against complainant and his securities, as stated, as the defendants are informed and believe

To the 3d interrogatory they answer, that a judgment was rendered against complainant for the sum of $1,861, and cost of suit, on the 10th day of December, A. D. 1840, as they believe.

To the 4th interrogatory they answer, that said judgment was credited (as they are informed and believe) on the 10th day of June, A. D. 1841, with the sum of $242 $\frac{77}{100}$ dollars and costs to that time.

To the 5th interrogatory they answer, that they are informed and believe that the complainant was and is indebted to the said Aberdeen and Pontotoc Railroad and Banking Company in a large sum; on account of which indebtedness, judgment was rendered on said garnishment. But these defendants have no knowledge of the manner in which said indebtedness was created.

To the 6th interrogatory they answer, they do not know, are not informed, and do not believe that said complainant, or any one for him, ever delivered any cotton in discharge of his said indebtedness to said company, or that any cotton was received or shipped by said company on account of said indebtedness.

To the 7th interrogatory they answer, they know nothing of complainant's transactions with said banking company; they have no knowledge or information, except from complainant's bill, in relation to the payment of $1,865 50 on the cotton bond mentioned.

To the 8th interrogatory they answer, they do not know, and are not informed, except by complainant's bill, whether the said judgment against complainant is for the residue due from said complainant to the said banking company upon the cotton bond mentioned in complainant's bill or not; these defendants are only informed and believe, that complainant in answer to the said garnishment, confessed and acknowledged his indebtedness, on which confession in his answer to said garnishment, said judgment was rendered.

To the 9th interrogatory they answer, that they positively deny that the said judgment against said banking company, in favor of these de-

fendants, William M. Tileston & Co., upon which said garnishment issued, was founded on a certificate or any other evidence of debt falsely issued as alleged; on the contrary, these defendants expressly state and answer, that their judgment was founded on bona fide debts due from said banking company to these defendants, without any fraud, collusion, or concert between these defendants and said banking company; and that they, these defendants, are now justly entitled to the recovery of the same; that the said liabilities of said company on which judgment has been so obtained, were received by these defendants in the fair course of trade and business, and for a full and valuable consideration.

W. M. TILESTON,
CHARLES N. SPOFFORD,
HARRIS & HARRISON,

Without that, &c.

Solicitors for Wm. M. Tileston & Co.

Personally appeared before me, George W. Morton, as a commissioner duly appointed by the circuit court of the United States, for the district of New York, William M. Tileston and Charles N. Spofford, who being duly sworn say, that they compose the firm of William M. Tileston & Co., and that the matters and things stated in the foregoing answer, so far as the same relates to their own act, or deed, or knowledge, the same is true, and so far as relates to the act, deed, or information of others, they believe the same to be true.

W. M. TILESTON,
CHARLES N. SPOFFORD.

Sworn to and subscribed before me, this eighteenth day of Nov., A. D. 1844.

GEO. W. MORTON, *U. S. Com.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, James W. Metcalf, clerk of the circuit court of the United States of America, for the southern district of New York, second circuit, do hereby certify, that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the annexed jurat and answer, and that the signature to the same is in his proper handwriting. And I do further certify, that he was at the time of signing the same a commissioner, duly appointed by the circuit court of the United States of America, for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this eighteenth day of November, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of these United States the sixty-ninth.

[L. S.]

J. W. METCALF, *Clk.*

Final proceedings had in the aforesaid cause at December term of said court, 1844, in the words and figures following, to wit:

THOMAS DAVIS
vs.
WILLIAM M. TILESTON & Co. } 4.—(Chy.)

FRIDAY, *December the 6th*, 1844.

Final decision in this case signed and ordered to be enrolled, which is as follows, to wit:

THOMAS DAVIS
vs.
WILLIAM M. TILESTON & Co. et al. } No. 4.

In chancery, in the district court of the United States for the northern district of Mississippi, December term, A. D. 1844.

This cause came on to be heard at this term, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz., that the demurrer of the defendants to the said bill of complaint of the complainants be sustained, and the said bill dismissed.

It is further ordered, adjudged, and decreed, that the defendants go hence and recover of the complainants the costs in and about this cause expended, for which execution may issue.

Given under my hand and seal, this 5th day of December, A. D. 1844.

S. J. GHOLSON. [SEAL.]

Appeal bond.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

Know all men by these presents, that we, Thomas Davis, James M. Morris, and Robert Nichol, are held and firmly bound to William M. Tileston, Charles N. Spofford, and William H. Hazeltine, late partners in trade under the firm and style of Wm. M. Tileston & Co., in the sum of four thousand dollars, to be paid to the said Wm. M. Tileston & Co., or their lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twelfth day of December, A. D. 1844.

The condition of the above obligation is such, that whereas, at a term of the district court of the United States for the northern district of Mississippi, commenced and held at the town of Pontotoc, in said district, on the first Monday of December, A. D. 1844, a decree was rendered by the said court in favor of the said Wm. M. Tileston & Co., against the said Thomas Davis, in dissolving the bill of injunction filed by the said Thomas Davis on the 31st day of July, 1843, restraining and enjoining the collection of a certain judgment recovered by the said Wm. M. Tileston & Co. against the said Thomas Davis and others, at

law, in said district court, on the 19th day of December, A. D. 1840, for the sum of eighteen hundred and sixty-one dollars and cost of suit; upon which judgment at law the sum of two hundred and forty-two dollars and 77 cents was made by the marshal on the 10th of June, 1841, and all costs subsequently paid on said judgment. And whereas the said Thomas Davis hath prayed and obtained an appeal to the Supreme Court of the United States, to reverse the decree of the said district court, dissolving the bill of injunction aforesaid; now, therefore, if the said Thomas Davis shall prosecute his said appeal to effect, and shall well and truly pay and satisfy the *the* residue of said judgment at law, and all such damages, costs, and interest as the said Supreme Court shall adjudge in the premises, if he, the said Thomas Davis, shall fail to make good his plea, then, and in that case, the above obligation to be null and void, otherwise to remain in full force and virtue.

THOMAS DAVIS, [SEAL.]
JAS. M. MORRISON, [SEAL.]
ROB'T NICHOL. [SEAL.]

Sealed and delivered in presence of—
Signed, *sealed, and delivered in presence of*—
C. M. PHIPPS. [SEAL.]

Said bond is endorsed thus:
Filed 14th Dec'r, 1844, and the security approved by me—
G. M. RAGSDALE, *Clerk*.

Writ of error issued at the time of filing this bond.
G. M. RAGSDALE, *Clerk*.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

I, G. M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, certify, that the above and foregoing twenty-two pages contain a full, true, and complete transcript of the bill of complaint filed in the aforesaid cause, and all the proceedings had thereon, as the same appears of record and on file in my office.

I further certify, that the writ of error and citation, herewith filed as part of this transcript, are the original writ of error and citation issued in said case, a true copy of which remain on file.

[L. S.] Given under my hand and the seal of said court, at office, in Pontotoc, this 30th day of September, A. D. 1845.

J. M. RAGSDALE, *Clerk*.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States, for the northern district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said district court before you, be-

tween Thomas Davis, complainant, (in chancery,) and William M. Tileston, Charles N. Spofford, and William H. Hazeltine, partners under the firm and style of Wm. M. Tileston & Co., defendants, a manifest error hath happened, to the great damage of the said Thomas Davis, as by his complaint appears. And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday in January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court of the United States, the second Monday in January,
[SEAL.] A. D. 1845, and of the independence of the United States the 69th.

Issued the 14th day of December, A. D. 1845.

G. M. RAGSDALE,
Clerk of the district court of the United States, for the northern district of Mississippi.

Citation in error.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

To William M. Tileston, Charles N. Spofford, and William H. Hazeltine, partners under the style of Wm. M. Tileston & Co., their counsellors, attorneys, and agents, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in January next, pursuant to a writ of error filed in the office of the clerk of the district court of the United States, for the northern district of Mississippi, wherein Thomas Davis is plaintiff, and you, Wm. M. Tileston & Co., are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, the second Monday in
[SEAL.] January, A. D. 1845, and of the independence of the United States the 69th.

Issued the 1st day of August, A. D. 1845.

S. J. GHOLSON.